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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2128	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/821,289	FELDSTEIN ET AL.	
	Examiner	Art Unit	
	Kimberly Thornewell	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *4/8/04* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. In the Office Action dated 1/22/2007, claims 1-30 were rejected. In the reply dated 4/3/2007, claims 1-30 were amended and therefore all of claims 1-30 remain pending in the instant application.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/3/2007 has been entered.

Response to Arguments

Information Disclosure Statement

3. The Examiner thanks Applicant for submitting a supplemental IDS so as to comply with 27 CFR 1.98. Accordingly, the IDS submitted on 4/3/2007 has been considered.

Claim Rejections, 35 USC § 101

4. The Examiner respectfully notes Applicant's amendment to claim 1 to recite automatically generating a build file for use by a network management simulator. However, the Examiner respectfully submits that the amendment is not sufficient to overcome the rejections under 35 USC § 101.

MPEP 2106 recites, in part:

(2) Practical Application That Produces a Useful, Concrete, and Tangible Result
If USPTO personnel determine that the claim does not entail the transformation of an article, then USPTO personnel shall review the claim to determine it produces a useful, tangible, and concrete result. In making this determination, the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether **the final result** achieved by the claimed invention is "useful, tangible, and concrete."

b) "TANGIBLE RESULT"
The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a 35 U.S.C. 101 judicial exception, in that the **process claim must set forth a practical application of that judicial exception to produce a real-world result**.

The final result achieved by the method of claim 1 is automatically generating an updated build file. The generation of a file is still performed within the confines of a computer. Therefore, the claimed method does not set forth a practical application in order to produce a real-world *final* result. Because claim 1 fails to produce a useful, concrete and tangible result, the rejection of claims 1-7 and 9-10 under 35 USC § 101 is maintained.

Claim Rejections, 35 USC § 102

5. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 4/3/2007 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

7. The specification is objected to because at page 13 lines 18-19, there is insufficient antecedent basis for the phrase "any type of computer readable medium." Appropriate correction is required.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-10 are directed to a method for generating a simulated network. However, the method of claim 1 contains a final result of generating an updated build file. The step of generating a file is performed within the confines of a computer. No practical application of the file is set forth in order to produce a real-world final result. Therefore, claim 1 fails to produce a useful, concrete and tangible result, as required by MPEP 2106.

Regarding claims 11-20, MPEP 2106.01 recites, in part:

> Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. **When a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim.**

Claim 11 is directed to software encoded in computer-readable media and when executed operable to perform a method for generating a simulated network based on a managed network. The method executed by the software contains steps similar to those of claim 1. Therefore, claim 11 suffers the same deficiencies as those discussed above with respect to claim 1 above. Furthermore, although Applicant claims the software being encoded in one or more computer-readable media, Applicant has not disclosed the computer-readable media in the specification.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-2, 9-12, 19-22, and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al., US Patent no. 6,014,697, in view of Cooper et al., US Patent no. 5,809,282.

As per claims 1, 11 and 21,

Lewis discloses a method, software, and a system for generating a simulated network, comprising steps and means for:

- Monitoring an actual managed network to determine a device personality (**column 1 lines 65-67**);
- Accessing a network discovery database comprising stored device personalities and associated device attributes for a plurality of device configurations (**column 2 lines 11-36**);
- Attaching the associated device attributes to the device personality to create a new device configuration (**column 2 line 56-column 3 line 11**); and
- Automatically generating an updated build file for use by a network management simulator (**column 3 lines 11-12, file F**) describing the simulated network based on the stored device configurations and the new device configuration (**column 3 lines 13-24**).

Lewis does not disclose expressly comparing the device personality with the stored device personalities, or selecting one of the stored device configurations having a stored device personality that is the same as the device personality to determine the associated device attributes. Cooper discloses a method, software, and a system for generating a simulated network comprising steps and means for comparing a device personality from an actual managed network with stored device personalities in a network discovery database (**column 9 line 60-column 10 line 12**, *comparing scenario equipment data against data from tariff and hardware databases*), and selecting one of the stored device configurations having a stored device personality that is the same as the device personality to determine the associated device attributes (**column 10 lines 13-26**).

It would have been obvious to one of ordinary skill in the art of network management simulation, at the time of the present invention, to modify Lewis' automatic population for a network simulator tool with Cooper's automated network simulator in order create a network management simulator by comparing device personalities of devices from actual managed networks to device personalities stored in a network discovery database, and selecting one of the configurations having a stored personality that is the same as the device personality. The motivation for doing so would have been to increase options for modifying a network architecture by creating a base-line simulation of a network from an actual managed network (Cooper column 3 lines 13-30).

As per claims 2, 12 and 22,

Lewis discloses writing the stored device configurations and the new device configuration to the build file, including the device personalities and the associated device attributes (**column 2 line 66-column 3 line 11**).

As per claims 9, 19, and 39,

Cooper discloses the device attributes comprising line speeds and event information (**column 11 line 56-column 12 line 13**).

As per claims 10, 20, and 30,

Cooper discloses the event information comprising an operational history including traps, system logs and fault logs (**column 11 line 56-column 12 line 54**).

12. Claims 3-8, 13-18, and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Cooper as applied to claims 1-2, 9-12, 19-22, and 29-30 above, and further in view of Schulte, "Internetworking Technology Overview: Network Management Basics," The Berufsakademie Stuttgart, October 1999.

As per claims 3, 13, and 23,

Lewis discloses the stored device personality comprising a device type (**column 2 lines 21-27**). However, neither Lewis nor Cooper discloses expressly the device personality comprising a device operating system version. Schulte teaches the basic model of network management (page 8 figure 4-1). Schulte further each network device having a variety of information (personalities) associated with it, including operating system version (**page 9 last three lines**).

It would have been obvious to one of ordinary skill in the art of network management, at the time of the present invention, to modify Lewis/Cooper's network management simulator with Schulte's device personalities in order to incorporate operating system version information into the stored device personality. The motivation for doing so would have been to improve network efficiency and achieve a smooth-running network by including all operational information into the device personalities (Schulte page 9 second to last paragraph).

As per claims 4, 14, and 24,

Cooper discloses selecting one of the stored device configurations having a stored device personality that is a closest match to the device personality (**column 10 lines 13-26**). Lewis discloses automatically generating a new device personality and attaching the new device personality to the device attributes to create a new device configuration (**column 2 line 66-column 3 line 11**).

As per claims 5, 15 and 25,

Schulte discloses the device personality being compared with the stored device personality based on the device type and the device operating system version (**page 10 first full paragraph**).

As per claims 6, 16 and 26,

Lewis discloses the device personality further including device interface information comprising a number and type of ports (**column 3 lines 60-67**).

As per claims 7, 17 and 27,

Lewis discloses device information being determined according to a neighbor discovery protocol table for the device (**column 2 lines 11-27**).

As per claims 8, 18 and 28,

Schulte discloses one of the stored device configurations being selected to a comparison of a closest device model number (**list bridging pages 9-10, page 10 first full paragraph**).

Conclusion

13. The prior art made of record on the form PTO-892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Thornewell whose telephone number is (571)272-6543. The examiner can normally be reached on 9am-5:30pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on (571)272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KAT

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